

## **Gao (Migration) [2018] AATA 1054 (5 April 2018)**

### **DECISION RECORD**

|                           |                                                                                         |
|---------------------------|-----------------------------------------------------------------------------------------|
| <b>DIVISION:</b>          | Migration & Refugee Division                                                            |
| <b>APPLICANT:</b>         | Ms Reifeng Gao                                                                          |
| <b>CASE NUMBER:</b>       | 1621001                                                                                 |
| <b>DIBP REFERENCE(S):</b> | BCC2016/1454466                                                                         |
| <b>MEMBER:</b>            | Ian Garnham                                                                             |
| <b>DATE:</b>              | 5 April 2018                                                                            |
| <b>PLACE OF DECISION:</b> | Melbourne                                                                               |
| <b>DECISION:</b>          | The Tribunal affirms the decision to cancel the applicant's subclass 801 (Spouse) visa. |

Statement made on 05 April 2018 at 2:34pm

### **CATCHWORDS**

Migration – Cancellation – BS - Partner (Residence) (Class BS) – Subclass 801 (Spouse) visa – Did not notify the Department of a change in circumstance – Spousal relationship had ended – Evidence about the relationship – Parties spent significant periods living in different countries – Inconsistent evidence regarding parties of the relationship – Witnesses unable to provide convincing evidence regarding nature of the spousal relationship

### **LEGISLATION**

*Migration Act 1958* ss 48, 104, 107, 109, 140, 189, 198  
*Migration Regulations 1994* r 2.41

### **CASES**

*MIAC v Khadgi* (2010) 190 FCR 248

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to cancel the applicant's subclass 801 (Spouse) visa under s.109(1) of the *Migration Act 1958* (the Act).
2. The delegate cancelled the visa on the basis that the visa holder did not advise the department (DIBP) of her change of circumstances, in that she did not advise that her circumstances had changed in that her spousal relationship had ended.
3. The issue in the present case is whether that ground for cancellation is made out, and if so, whether the visa should be cancelled.
4. The applicant appeared before the Tribunal on 3 August 2017 to give evidence and present arguments. The Tribunal also received oral evidence from Michael John Russell and Xiao Hong Tang, both friends of the visa holder.
5. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
6. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.
7. On 3 August 2017 the visa holder provided a submission by way of Statutory Declaration dated 3<sup>rd</sup> August 2017 (the 2<sup>nd</sup> submission).
8. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be affirmed.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

9. Section 109(1) of the Act allows the Minister to cancel a visa if the visa holder has failed to comply with ss.101, 102, 103, 104, 105 or 107(2) of the Act. Broadly speaking, these sections require non-citizens to provide correct information in their visa applications and passenger cards, not to provide bogus documents and to notify the Department of any incorrect information of which they become aware and of any relevant changes in circumstances.
10. The exercise of the cancellation power under s.109 of the Act is conditional on the Minister issuing a valid notice to the visa holder under s.107 of the Act, providing particulars of the alleged non-compliance. Where a notice is issued that does not comply with the requirements in s.107, the power to cancel the visa does not arise. Extracts of the Act relevant to this case are attached to this decision.
11. In the present matter, the Tribunal is satisfied that the delegate had reached the necessary state of mind to engage s.107 and that the notice issued on 19 August 2016<sup>1</sup> under s.107 complied with the statutory requirements.

<sup>1</sup>At FF:16-21 (DIBP)

## **WAS THERE NON-COMPLIANCE AS DESCRIBED IN THE S.107 NOTICE?**

12. The issue before the Tribunal is whether there was non-compliance in the way described in the s.107 notice, being the manner particularised in the notice, and if so, whether the visa should be cancelled. The non-compliance identified and particularised in the s.107 notice was non-compliance with s.104 in the following respects; the visa holder failed to advise the department (DIBP) of a change to her circumstances (ending of her spousal relationship).
13. *Claimed background and progress of relationship and migration history:*
14. At the hearing the visa holder gave the following information about her relationship. The information also includes information considered from the Movement Details and other DIBP information about the parties:
- (a) The visa holder claims she met the ex-sponsor, Mr Kun Liu in 2011 and began what she describes as a *romantic relationship* over the internet. The ex-sponsor was living in China at the time (he had left Australia on 24/01/2009) and the visa holder was present in Australia on a subclass 572 Vocational Education and Training Sector visa that had effect until 11/06/13.
  - (b) The visa holder travelled to China on 16/01/12 and claims she married (unofficially) her ex-sponsor in China on 10 February 2012. The visa holder returned to Australia on 28/02/2012 and her ex-sponsor returned, after more than 3 years in China, on the next day on 29/02/2012.
  - (c) The visa holder claims she lived in a share house with other students during this period.
  - (d) The visa holder and her ex-sponsor married in Australia on 8 March 2012 and at some stage after this time the visa holder claims they moved into her ex-sponsor's father's house in Ringwood. She claims after a time she and her husband moved into a rental house next door that is owned by her then father-in-law. The visa application was lodged on 10/04/12 and the subclass 820 temporary visa was granted on 11/06/2013.
  - (e) The visa holder returned to China alone in the following periods; 25/05/2012 - 06/06/2012 and 08/11/2012 - 14/12/2012. At the hearing she said that these trips were made to visit her mother.
  - (f) The visa holder said after a time they moved to Hayward lane in Melbourne for the approximate period; March 2013 till the ex-sponsor left Australia in May 2014. During the time that the visa holder's husband lived in China, the visa holder travelled to China alone; in the further approximate periods; 4½ months in the beginning of 2014, 1 month in November 2014, 6 weeks in February/March 2015, 2 weeks in May 2015 and 5 weeks in October 2015 which the visa holder states is the last time she saw her ex-sponsor.
  - (g) The visa holder's subclass 801 permanent partner visa was granted on 13 March 2015.
  - (h) The visa holder again travelled overseas in the period 19/05/2016 to 13/07/2016.
  - (i) The visa holder and her ex-sponsor divorced on 10 June 2016.

- (j) On 19 August 2016 DIBP sent the visa holder a Notice of Intention to Consider Cancellation (NOICC) of her subclass 801 permanent partner visa.
- (k) On 9 September 2016 the visa holder provided a submission to DIBP (the 1<sup>st</sup> submission) in response to the NOICC.
- (l) On 6 December 2016 the visa holder's visa was cancelled by DIBP.
- (m) The visa holder's ex-sponsor and husband returned to Australia on 11 May 2017.

15. *Consideration of the evidence about the relationship:*

- 16. The delegate appeared to be heavily influenced by the recorded inconsistent responses of the visa holder and her ex-sponsor made in their interviews in April 2016. Both of their initial responses indicated that they were no longer in a genuine and committed relationship at that time and that they had not been so for a significant period.
- 17. I have also had many difficulties accepting as truthful, the evidence and information that the visa holder has provided concerning the length and nature of her relationship with the ex-sponsor. The most significant of these difficulties relates to the limited times that the visa holder and her sponsor were together.
- 18. I asked the visa holder why, after travelling to China for 6 weeks and physically meeting the ex-sponsor for the first time and marrying him, why they would not return to Australia on the same flight as set out at paragraph 13(b) above? The visa holder said that she had to help her mother to fly out of China and had to leave on that the flight she was booked on. I consider it is inconsistent with a genuine and committed relationship that the parties would not return to Australia on the same flight.
- 19. I also considered it highly unusual that following their marriage the parties spent such significant periods living in different countries and never travelled to or from China at the same time. Based on the dates and the visa holder's narrative of the relationship, the visa holder agreed that in the 2¼ year period from marriage (February 2012), until the ex-sponsor departed permanently (May 2014), the parties spent roughly half of that time in different countries.
- 20. I queried the visa holder about the period of their relationship when she was in China for 4½ months at the beginning of 2014; she returned to Australia on 6 May 2014 after this extensive period and her husband then left Australia (for 3 years) 6 days later on 11 May 2014. The visa holder said that her husband and ex-sponsor, who is an Australian citizen since 17/09/2003, had to leave Australia to undertake a casual job in China working as a tutor and also needed to look after his mother.
- 21. Excluding the first of these periods, and concentrating on the 18 months after the sponsor left for China, from May 2014 until October 2015 the visa holder went to China on 4 occasions for a cumulative period of approximately 4½ months (as set out in paragraph 13(f)). The visa holder first claimed that during these trips she would stay at her mother's place (which was a 10 hour train journey from her husband's home) for 1-2 days only and the rest of the time was spent visiting and living with her husband. She then changed her evidence and said that she would visit her mother for 1-2 days at both ends of her trips.
- 22. Towards the end of the hearing I expressed concerns about the significant periods spent apart (for example, in early 2014 where the visa holder claims she was looking after her mother in China and her husband was living in Australia) by the parties. I did so

pursuant to s.359AA of the Act and provided time for the visa holder to respond to these concerns in writing. The visa holder did not respond to the specific concerns raised.

23. If it is correct that; in the 18 month period between May 2014 and November 2015, the visa holder lived with her husband in China for a cumulative 3½ month period over 4 trips, I do not consider that this statement is compatible or consistent with the ex-sponsor's statement made at the interview on 13/04/2016. In those interview notes the ex-sponsor's response to a question about how often he and the visa holder visited each other since he had been in China and his response is recorded as follows:

24. *Asked Mr Liu if they visited each other, Mr Liu said his wife came to visit him each year.<sup>2</sup>*

25. I do not find it plausible that, if the visa holder had in fact visited Mr Liu for a cumulative period of 3½ months in this first 18 month period that the ex-sponsor spent living in China that he would have responded in this limited way.
26. I also consider that the visa holder's original contemporaneous evidence about the relationship given in her interview (also conducted in April 2016) is more likely than not to be true. When asked about the relationship the visa holder is recorded as making the following response:

27. *...Ms Gao said they had separated from each other for about two years and they are under the divorce process.*

28. The visa holder has since argued in the submissions and at the hearing that she was caught off guard when this call was received and that she believed the caller was a blackmailer and not really from DIBP. At the hearing the visa holder said that she also did not understand the question and also that she thought the interviewer was a blackmailer and was not from DIBP. The information from this interview also states that the visa holder said the divorce began a long time ago and also that she had provided this information to DIBP. The claim by the visa holder that she thought she was being blackmailed was contained in the most recent submission to the tribunal dated 3 August 2017 but not in the submission to DIBP dated 4 September 2016.

29. When I asked the visa holder why this explanation was not included in the first submission she said her registered migration agent forgot to include this information. When I questioned her registered migration agent about this they confirmed that this information was not included in the earlier submission because they did not think it was relevant at the time. They went on to say that they thought the evidence required at that time was not about the interview but the genuineness of the relationship.

30. I find the visa holder's recent evidence regarding her reaction to this interview to be implausible and consider that her original response that she had separated from the ex-sponsor (for approximately 2 years) is more likely to reflect the genuine status of the relationship. I consider that if the visa holder genuinely believed that she was speaking to a hoax caller (blackmailer) she would not have continued to answer questions and would have terminated the call. I consider her evidence about a hoax caller is a more recent invention in an attempt to strengthen her case and deflect from her initial response that the relationship had ended approximately 2 years earlier, that is in April/May 2014 when her husband departed Australia.

31. The visa holder's most recent submission also included 3 photographs that are all labelled on different dates in February 2015 when the visa holder was in China. The two

<sup>2</sup>At F:1 (DIBP)

photographs of the parties are in tourist poses and the third photograph shows the visa holder with 2 other persons. While these photographs demonstrate that the parties probably saw each other on this trip that the visa holder made to China, they do not establish that the parties were in a genuine and committed long-term relationship or that they spent any significant amount of time together, if at all in that period. No independent evidence from neighbours or family members has been provided to indicate that the visa holder lived with her husband during her extensive periods in China as she claims.

32. In the documents the visa holder included mortgage loan documents for a loan that the visa holder was solely approved for on 17 June 2015<sup>3</sup>. In her statements the visa holder has said that her parents lent her some of the money for the purchase of the property but insisted that she own the property as an individual. The visa holder also said that she told the bank that she was married when she applied for the loan but that the bank did not record her husband on the application form. I told her that I did not believe that a bank would do this when considering granting a significant mortgage loan. I also told her that if she is being truthful in her evidence and still regarded her husband to be such when she applied for the loan, as she is saying, he would be recorded on the loan application document. The visa applicant agreed to provide the loan application document and I also advised her that if the document was not provided I would require an explanation as to why this was the case. Neither has been provided.
33. The tribunal also discussed a series of WeChat messages with the visa holder that she claimed were made between herself and the ex-sponsor.<sup>4</sup> They are dated 10 March and 19 February and the visa holder said they were for the year 2016. A translation of the 10 March messages was provided as well as evidence of transfers of \$800.20 on 10/03/16 and \$430.50 on 09/07/15, made by the visa holder to her former husband. These transfers do not establish that the parties were in a genuine and continuing relationship at the time of the transfers, merely that the transactions occurred at these times. Moreover the translation of messages on 10 March confirms that the conversation between the parties was purely about the transfer of those funds. The messages do not reveal any social or intimate contact between the parties.
34. The visa holder also provided a receipt for a package of gifts that she claims were sent to her husband's mother in China on 26 February 2016.<sup>5</sup> She said that the gifts were sent to her for Chinese New Year because she still regarded the ex-sponsor to be her husband at that time.
35. Both witnesses at the hearing were unable to provide any convincing evidence that the visa holder was in a spousal type relationship with her ex-husband after the visa holder left for China in December 2013. Both provided statutory declarations to the tribunal which intimated that they were aware of the relationship continuing when the ex-sponsor went to China in May 2014. However both witnesses were unaware that he left Australia after the visa holder had returned 5 days earlier following a 4½ stint in China by herself. This lack of knowledge about the parties' movements at that time gives me little confidence that the witnesses were actually aware of the status of the relationship during the relevant period.
36. The tribunal also put to the visa holder at the hearing (pursuant to section 359AA of the Act) information that was contained in the DIBP file and subject to a section 375A non-disclosure notice. The information pertained to dob-in information provided to DIBP on 9 June 2015 that alleged the parties were in a contrived relationship and that the ex-

<sup>3</sup>At FF: 36-41 (AAT)

<sup>4</sup>At FF: 42-45 (AAT)

<sup>5</sup>At F: 32 (AAT)

sponsor was in fact married to another person who lived in China. The visa holder elected to respond to this information by way of submission after the hearing but has failed to do so.

37. At the conclusion of the hearing the visa holder also requested an opportunity to provide the tribunal with further specific (as indicated in the discussion above) and general information. However no further information has been provided.
38. The tribunal considers there are too many inconsistencies and implausible evidence that has been provided by the visa holder. In addition, the visa holder has failed to provide any clarifying information or information that would support their case that they continued to be in a spousal relationship with the ex-sponsor after the beginning of 2014, as they said they would.
39. Consequently the tribunal is not satisfied that at least after the beginning of 2014, the visa holder was in a genuine and continuing exclusive relationship with her ex-sponsor or that the parties lived separately and apart on a temporary basis.
40. Therefore the tribunal finds that the visa holder failed to advise DIBP of her new circumstances when the relationship ceased.
41. For these reasons, the Tribunal finds that there was non-compliance with section 104(1) of the Act by the applicant in the way described in the section 107 notice.

#### **SHOULD THE VISA BE CANCELLED?**

42. As the Tribunal has decided that there was non-compliance in the way described in the notice given to the applicant under s.107 of the Act, it is necessary to consider whether the visa should be cancelled pursuant to s.109(1). Cancellation in this context is discretionary, as there are no mandatory cancellation circumstances prescribed under s.109(2).
43. At the conclusion of the hearing the tribunal advised the visa holder that if it was determined that the ground for cancellation of her visa existed I would request submissions with respect to whether the visa should be cancelled. On 20 March 2018 the tribunal wrote to the visa holder advising her that the tribunal would shortly reach a decision as to whether the ground for cancelling existed and that I was therefore seeking information as to whether the visa should be cancelled. The letter set out the prescribed grounds and policy factors that would be taken into consideration in making this decision. The letter also advised that a response should be provided by 3 April 2018. The visa holder has not responded to this request for information. Therefore the tribunal has made this consideration based on the visa holder's response to the section 107 notice about the non-compliance (submission dated 9 December 2016<sup>6</sup>) and all the other information before me.
44. In exercising this power, the Tribunal must consider the applicant's response (if any) to the s.107 notice about the non-compliance, and have regard to any prescribed circumstances: s.109(1)(b) and (c). The prescribed circumstances are set out in r.2.41 of the Regulations. Briefly, they are:

<sup>6</sup>At FF: 28-30 (DIBP)

- **THE CORRECT INFORMATION**

45. The tribunal has found that the visa holder was not in a spousal relationship with her ex-sponsor at the relevant time, therefore the visa holder was not entitled to the subclass 801 visa granted on 13/03/2015.

- **THE CONTENT OF THE GENUINE DOCUMENT (IF ANY)**

46. The tribunal has not made any findings with respect to the genuineness of any of the documents before it in this case. However, I note that both of the submissions provided by the visa holder and the declarations made by the witnesses at the hearing state that the spousal relationship was in existence until early 2016 and the tribunal has found that this information is incorrect.

- **WHETHER THE DECISION TO GRANT A VISA OR IMMIGRATION CLEAR THE VISA HOLDER WAS BASED, WHOLLY OR PARTLY, ON INCORRECT INFORMATION OR A BOGUS DOCUMENT**

47. I consider that the decision to grant the visa on 13/03/2015 was based wholly or partly on incorrect information that was before DIBP at that time. This is because the information that was before DIBP at that time was that the visa holder was in a spousal relationship with her ex-sponsor at that time.

- **THE CIRCUMSTANCES IN WHICH THE NON-COMPLIANCE OCCURRED**

48. In her response to the NOICC and all of her responses to this tribunal the visa holder has maintained that the non-compliance did not occur. In particular, as set out above, there is no independent evidence to support that the visa holder lived with her ex-sponsor when she travelled to China after he returned there in May 2014. Furthermore the visa holder has failed to respond to the opportunity to provide such evidence to the tribunal.

- **THE PRESENT CIRCUMSTANCES OF THE VISA HOLDER**

49. The tribunal has no information before it about the current circumstances of the visa holder other than her response to the NOICC where she states that she has completed an aged care qualification and that she has worked in that field for several years.

- **THE SUBSEQUENT BEHAVIOUR OF THE VISA HOLDER CONCERNING HIS OR HER OBLIGATIONS UNDER SUBDIVISION C OF DIVISION 3 OF PART 2 OF THE ACT**

50. In the DIBP interview conducted in April 2016, the visa holder stated that she informed DIBP of the divorce process a 'long time ago'. However the delegate states that there is no evidence in DIBP records of the visa holder advising or attempting to advise of the change in her circumstances.

- **ANY OTHER INSTANCES OF NON-COMPLIANCE BY THE VISA HOLDER KNOWN TO THE MINISTER**

51. There is no evidence or information before the tribunal of any other instances of non-compliance by the visa holder with the requirements of the Act.



- **THE TIME THAT HAS ELAPSED SINCE THE NON-COMPLIANCE**

52. According to the findings I have made, at least 3½ years have elapsed since the non-compliance first occurred. Since this time the visa holder has received the benefits of firstly her temporary subclass 820 visa and then her permanent subclass 801 visa.

- **ANY BREACHES OF THE LAW SINCE THE NON-COMPLIANCE AND THE SERIOUSNESS OF THOSE BREACHES**

53. There is no information before the tribunal of any breaches of the law other than the non-compliance that is the subject of this decision.

- **ANY CONTRIBUTION MADE BY THE HOLDER TO THE COMMUNITY.**

54. Aside from an assumed contribution to the community by the visa holder through her employment in aged care, I am unaware of any contributions made to the Australian community by the visa holder.

55. While these factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any given case: *MIAC v Khadgi* (2010) 190 FCR 248.

56. The Tribunal may also have regard to lawful government policy. The relevant policy is set out in the Department's Procedural Advice Manual) PAM3 'General visa cancellation powers', which refers to matters such as the consequences of cancelling the visa, international obligations and any other relevant matters.

57. The policy guidelines the tribunal has considered are as follows:

- whether there are mandatory legal consequences, such as whether cancellation would result in the visa holder being unlawful and subject to detention, or whether indefinite detention is a possible consequence of cancellation, or whether there are provisions in the Act which prevent the person from making a valid visa application without the Minister's intervention

58. If the visa holder's visa is cancelled she will become an unlawful non-citizen and liable to detention under section 189 and removal under section 198 of the Act. The visa holder may also be subject to section 48 of the Act which limits further specific visa applications by a person who does not hold a substantive visa and who has had a visa cancelled since they last entered the migration zone.

- whether there would be consequential cancellations under s.140

59. There is no information before the tribunal that consequential cancellations pursuant to section 140 of the Act would arise due to cancellation of the visa holder's visa.

- whether any international obligations would be breached as a result of the cancellation, such as non-refoulement obligations, family unity principles or the obligation to consider the best interests of the child.

60. The visa holder has not applied for refugee status or invoked Australia's protection obligations. Furthermore there is no information before the tribunal that indicates that cancellation of the visa holder's visa would be in breach of Australia's non-refoulement or international obligations.

- any other relevant matters, including the degree of hardship that may be caused to the visa holder and any family members.

61. I have noted that the visa holder has provided a referral for the visa holder by a general practitioner to a psychologist dated 15 September 2016.<sup>7</sup> The referral states that the visa holder, *...has been experiencing increased depressive symptoms, poor sleep and concentration over the last year.* It states that the symptoms appear to have been triggered by divorce from her husband. It also states that the visa holder has a history of weight loss and that her weight is the best it has been for over 2 years and that the visa holder has agreed to commence antidepressant medication at night. This information is consistent with the evidence of the witnesses and in particular that of Xiao Hong Tang who stated that the visa holder lost weight and became increasingly depressed in early 2016 because of the breakdown of her marriage. However I have also noted that the referral was provided approximately one month after the NOICC was provided to the visa holder. In addition all of this information relates to the alleged cessation of the relationship rather than any effects the possible cancellation of the visa holder's visa will have on her medical condition.

62. The Tribunal has decided that there was non-compliance by the applicant in the way described in the notice given under s.107 of the Act. Further, after consideration of all of the information before me and having regard to all the relevant circumstances, as discussed above, the Tribunal concludes that the visa should be cancelled.

## **DECISION**

63. The Tribunal affirms the decision to cancel the applicant's subclass 801 (Spouse) visa.

Ian Garnham  
Member

<sup>7</sup>At F: 33 (AAT)

## ATTACHMENT – *Migration Act 1958* (extracts)

### 5 Interpretation

- (1) In this Act, unless the contrary intention appears:
- bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:
- (a) purports to have been, but was not, issued in respect of the person; or
  - (b) is counterfeit or has been altered by a person who does not have authority to do so; or
  - (c) was obtained because of a false or misleading statement, whether or not made knowingly.

### 97 Interpretation

In this Subdivision:

**application form**, in relation to a non-citizen, means a form on which a non-citizen applies for a visa, being a form that regulations made for the purposes of section 46 allow to be used for making the application.

**passenger card** has the meaning given by subsection 506(2) and, for the purposes of section 115, includes any document provided for by regulations under paragraph 504(1)(c).

Note: **Bogus document** is defined in subsection 5(1).

### 98 Completion of visa application

A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

### 99 Information is answer

Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.

### 100 Incorrect answers

For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.

### 104 Changes in circumstances to be notified

- (1) If circumstances change so that an answer to a question on a non-citizen's application form or an answer under this section is incorrect in the new circumstances, he or she must, as soon as practicable, inform an officer in writing of the new circumstances and of the correct answer in them.
- (2) If the applicant is in Australia at the time the visa is granted, subsection (1) only applies to changes in circumstance before the visa is granted.
- (3) If the applicant is outside Australia at the time the visa is granted, subsection (1) only applies to changes in circumstances after the application and before the applicant is immigration cleared.
- (4) Subsection (1) applies despite the grant of any visa.

### 107 Notice of incorrect applications

- (1) If the Minister considers that the holder of a visa who has been immigration cleared (whether or not because of that visa) did not comply with section 101, 102, 103, 104 or 105 or with subsection (2) in a response to a notice under this section, the Minister may give the holder a notice:
  - (a) giving particulars of the possible non-compliance; and
  - (b) stating that, within a period stated in the notice as mentioned in subsection (1A), the holder may give the Minister a written response to the notice that:
    - (i) if the holder disputes that there was non-compliance:
      - (A) shows that there was compliance; and
      - (B) in case the Minister decides under section 108 that, in spite of the statement under sub-subparagraph (A), there was non-compliance—shows cause why the visa should not be cancelled; or

- (ii) if the holder accepts that there was non-compliance:
    - (A) give reasons for the non-compliance; and
    - (B) shows cause why the visa should not be cancelled; and
- (c) stating that the Minister will consider cancelling the visa:
  - (i) if the holder gives the Minister oral or written notice, within the period stated as mentioned in subsection (1A), that he or she will not give a written response—when that notice is given; or
  - (ii) if the holder gives the Minister a written response within that period—when the response is given; or
  - (iii) otherwise—at the end of that period; and
- (d) setting out the effect of sections 108, 109, 111 and 112; and
- (e) informing the holder that the holder's obligations under section 104 or 105 are not affected by the notice under this section; and
- (f) requiring the holder:
  - (i) to tell the Minister the address at which the holder is living; and
  - (ii) if the holder changes that address before the Minister notifies the holder of the Minister's decision on whether there was non-compliance by the holder—to tell the Minister the changed address.
- (1A) The period to be stated in the notice under subsection (1) must be:
  - (a) in respect of the holder of a temporary visa—the period prescribed by the regulations or, if no period is prescribed, a reasonable period; or
  - (b) otherwise—14 days.
- (1B) Regulations prescribing a period for the purposes of paragraph (1A)(a) may prescribe different periods and state when a particular period is to apply, which, without limiting the generality of the power, may be to:
  - (a) visas of a stated class; or
  - (b) visa holders in stated circumstances; or
  - (c) visa holders in a stated class of people (who may be visa holders in a particular place); or
  - (d) visa holders in a stated class of people (who may be visa holders in a particular place) in stated circumstances.
- (2) If the visa holder responds to the notice, he or she must do so without making any incorrect statement.

#### **108 Decision about non-compliance**

The Minister is to:

- (a) consider any response given by a visa holder in the way required by paragraph 107(1)(b); and
- (b) decide whether there was non-compliance by the visa holder in the way described in the notice.

#### **109 Cancellation of visa if information incorrect**

- (1) The Minister, after:
  - (a) deciding under section 108 that there was non-compliance by the holder of a visa; and
  - (b) considering any response to the notice about the non-compliance given in a way required by paragraph 107(1)(b); and
  - (c) having regard to any prescribed circumstances;
 may cancel the visa.
- (2) If the Minister may cancel a visa under subsection (1), the Minister must do so if there exist circumstances declared by the regulations to be circumstances in which a visa must be cancelled.